



Court File No. **VLC-S-S-122316**

No. \_\_\_\_\_  
**VANCOUVER REGISTRY**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

**DEBORAH LOUISE DOUEZ**

**PLAINTIFF**

**AND:**

**FACEBOOK, INC.**

**DEFENDANT**

**NOTICE OF CIVIL CLAIM**

**Brought pursuant to the *Class Proceedings Act*, RSBC 1996, c-50**

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **CLAIM OF THE PLAINTIFF**

### **Part 1: STATEMENT OF FACTS**

#### **THE PLAINTIFF**

1. The plaintiff, Deborah Louise Douez, also known as "Debbie Douez" is a videographer and owner of Video4Web Productions, resident in Vancouver, British Columbia with an address for service at 1410 - 777 Hornby Street, Vancouver, British Columbia.
2. Since on or about June 6, 2007, the plaintiff has been a Member of the social networking website Facebook, as defined below.

#### **THE DEFENDANT and FACEBOOK**

3. The defendant Facebook, Inc. ("Facebook") is a corporation organized and existing under the laws of the State of Delaware, United States of America.
4. Facebook operates a social networking website (the "Website").
5. The Website began operations on or about 2004 under the domain name thefacebook.com. Initially only students at Harvard University were able to register for access to the Website.
6. Since in or about 2005, Facebook has operated the Website under the domain name facebook.com. Facebook rapidly increased its user base throughout 2005.
7. Commencing in or about 2006, Facebook allowed users throughout the world to register for access to the Website (individually or collectively, the "Members"). The Members include persons resident in British Columbia.
8. During the period commencing on or about December 1, 2011 and ending December 31, 2011, Facebook had acquired approximately 845 million active registered users, with approximately 57% using the Website on a daily basis.
9. Individuals seeking to become Members of and use the Website must register with Facebook. The registration process requires the user to provide personal

information to Facebook through the Website, including the user's name, gender, date of birth, and email address.

10. Once registered, new Members are prompted by Facebook to complete a personal profile page on the Website (a "Profile").
11. Facebook prompts and encourages Members to populate their Profile with personal information, including the Member's portrait, residential address, telephone number, education, employment history, religious affiliation, relationship status, sexual orientation, political opinions, hometown, activities, interests, and favorite books, films, music, and games.
12. Facebook also prompts and encourages Members to connect with other Members by requesting that those Members accept them as "Friends". "Friends" within the Website environment may be but are not necessarily persons with whom the Member shares bonds of mutual affection and affinity. These Friends are persons to whom a Member has given certain privileges to send and receive messages, view postings, photographs or other Website actions taken by the Member, regardless of whether those persons are "friends" in the ordinary sense of the word outside the Website environment.

## **THE FACEBOOK ENVIRONMENT**

13. Members have the ability to author information within their Profile and elsewhere within the Website. To do so the Member must enter their user name and chosen password which then allows the Member to enter into the Website. The Member may then deliver public and private messages to other Members, upload photographs or videos onto the Website, and share other personal information within the Website environment. Facebook terms these various activities a "Story" or "Stories".
14. Members are not limited to creating a personal Profile. They may also create "Pages" for businesses, organizations, products, causes or services. Postings on those Pages are also called Stories.
15. Members receive constantly updated streams of Stories from their Friends and from Pages to which they subscribe. These updates appear within a "News Feed" that the Member can view on Facebook. The News Feed is by default the first page a Member is presented with when logging into Facebook.
16. Facebook encourages Members to interact with other Members and Pages by commenting upon other Members' Stories, or by indicating they "Like" those Stories.

17. To "Like" a Story, a Member must click on a button labeled "Like", which is sometimes accompanied by a graphic displaying a hand in a "thumbs up" gesture (the "Like Button"). Once the Like Button is clicked by a Member, a statement appears below the Story stating the Member "likes this".
18. As with the word "Friend", within the Website the word "like" does not necessarily carry its ordinary meaning, which is to connote affinity. Rather, Members are encouraged to click the Like Button for many reasons apart from true affinity, including in order to receive special offers, enter promotional contests, gain access to other Internet pages, view photographs, or obtain notifications for third-party promotions or events. Members may also click the Like Button for other personal reasons such as for example to keep track of products or services they may want to investigate or consider at a later stage.
19. Third parties may make use of use Facebook's Like Button on their own third party websites. The Like Button links Members' activities on the third party website back to the same Member's Profile on Facebook.
20. When a Member clicks a Like Button within the Website or upon a third party website, a Story appears on that Member's Profile and on that Member's Friends' News Feed which reveals the Member's action in clicking the Like Button.
21. Facebook also allows Members to "Check In" to physical locations by accessing Facebook through the Member's mobile phone or other wireless communications device from that physical location. When a Member Checks In to a location, Facebook creates a Story to broadcast the Member's location to the Member's Friends and anyone else who may have access to the Member's activities.
22. Facebook facilitates a further form of interaction within the Website through the use of applications, or "Apps", which are developed by Facebook or by third parties as authorized by Facebook. Apps add additional features to Facebook, allowing Members to use Facebook as a means to engage in numerous and varied activities, either on an individual basis, or with other Members, such as playing games, pledging to causes, reading and sharing news or other stories, listening to music, sharing computer files, sending gifts, and tracking birthdays, family relationships or other events.

## **FACEBOOK ADVERTISEMENTS**

23. Facebook uses the Website and the personal information it collects from Members as a platform for the sale and display of advertising, which generates revenues for Facebook.
24. In particular, Facebook receives payment from third party advertisers in exchange for displaying advertisers' content to Members through the Website.

## **SPONSORED STORIES**

25. On or about January 25, 2011, Facebook introduced a form of advertising on the Website under the name "Sponsored Story" or "Sponsored Stories".
26. Prior to introducing Sponsored Stories on the Website, Facebook's advertising services were based on utilizing the vast amount of data Facebook has collected from Members in order to trigger the appearance of traditional internet-based advertisements targeted to a particular Member's demographic.
27. Unlike traditional advertising including that previously used by Facebook, a Sponsored Story uses a Member's name or portrait to endorse goods or service of a third-party advertiser (a "Sponsor") to that Member's Friends, as follows:
  - a. When a Member engages in certain activities within the Website, such as clicking the Like Button in connection with a Sponsor or its goods or services or Page, Checking In to a physical location linked to Sponsor, or using an application or App connected with a Sponsor, Facebook may generate a Sponsored Story;
  - b. The resulting Sponsored Story displays the Member's portrait or name beside and in connection with the Sponsor's advertisement or logo, and contains a purported endorsement by the Member in relation to the Sponsor or its goods or services; and
  - c. Each Sponsored Story featuring a Member's portrait or name and purported endorsement of an advertised good or service is published to some or all of that Member's Friends on Facebook.
28. Through Sponsored Stories, Facebook transforms the character of a Member's actions in clicking the Like Button, Checking In to a location or using an App into an endorsement of goods or services by the Member which is then published by Facebook to the Member's Friends.
29. In so doing Facebook authors and creates a unique and new advertisement through the rearrangement of text and images which then features the Member as an endorser, marketer or advertiser of a third party good or service.
30. When Facebook first introduced Sponsored Stories on or about January 25, 2011, Facebook displayed the Sponsored Stories feature in a sidebar down the right-hand side of Members' News Feeds.
31. In or about January 2012, the defendant rearranged the Sponsored Story format such that Sponsored Stories concerning a Member's Friends may also appear within the Member's News Feed.

32. In marketing Sponsored Stories to third party advertisers, Facebook states that recommendations of friends have a powerful influence on consumer interest and purchase decisions.
33. Facebook receives significant revenue from its Sponsored Stories advertising.
34. Facebook does not pay Members for use of their name or likeness in the Sponsored Stories advertisements.

#### **LACK OF CONSENT**

35. Facebook does not give notice to Members that their names or portraits are being used in connection with a Sponsored Story or that Facebook is depicting that Member as endorsing a particular good or service.
36. In other words, other Members may view advertisements, including Sponsored Stories, purportedly endorsed by a Member who is unaware that his or her name or portrait is being used in connection with that advertisement.
37. Facebook does not advise, inform or compensate Members when it uses their names or portraits to endorse a Sponsor's goods or services or otherwise displays Members' names or portraits in Sponsored Stories.
38. Facebook does not allow Members to either limit or altogether block the appearance of their names or portraits in connection with a Sponsored Story.
39. Since the introduction of Sponsored Stories, Facebook has not sought or obtained Members' consent to use Members' names or portraits for the purpose of advertising or promoting the sale of Sponsors' goods or services.

#### **USE OF PLAINTIFF'S NAME OR PORTRAIT IN SPONSORED STORIES**

40. On at least one occasion since January 25, 2011, Facebook authored a Sponsored Story which displayed the plaintiff's name and portrait to at least one of her Friends in the following format:

*"Debbie Douez likes Cool Entrepreneurs."*

41. The plaintiff did not consent to Facebook's use of her name or portrait in Sponsored Stories advertising or promoting "Cool Entrepreneurs" or any other good or service.
42. Facebook did not pay the plaintiff for the use of her name or portrait in Sponsored Stories advertising or promoting "Cool Entrepreneurs" or any other good or service notwithstanding that such use generated advertising revenues for Facebook.

## **THE PROPOSED CLASS**

43. The plaintiff brings this action on her own behalf, and on behalf of a proposed class of individuals (the "Class") consisting of:

All British Columbia resident persons who are Members of Facebook and whose name, portrait, or both have been used by Facebook in a Sponsored Story.

## **USE OF CLASS MEMBERS' NAME OR PORTRAIT IN SPONSORED STORIES**

44. Since January 25, 2011, Facebook displayed the Class members' names or portraits in Sponsored Stories advertising or promoting goods or services.
45. Facebook did not seek the consent of the Class members prior to using their names or portraits in connection with Sponsored Stories.
46. Facebook did not compensate the Class members for the use of their names or portraits in Sponsored Stories advertising or promoting any goods or services notwithstanding that such use generated advertising revenues for Facebook.

## **Part 2: RELIEF SOUGHT**

1. The plaintiff, on her own behalf and on behalf of the Class members, seeks the following relief:
- a. An order certifying this action as a class action pursuant to the *Class Proceedings Act*, RSBC 1996, c 50;
  - b. A declaration that Facebook's use of Class members' names or portraits to advertise or to promote goods or services in connection with Sponsored Stories, breached section 3 of the *Privacy Act*, RSBC 1996, c 373 (the "*Privacy Act*");
  - c. An injunction enjoining Facebook from using the Class members' names or portraits in advertising, including Sponsored Stories, without that proposed Class member's express written consent;
  - d. General damages, assessed in the aggregate pursuant to section 29(1) of the *Class Proceedings Act*;
  - e. Punitive damages, assessed in the aggregate pursuant to section 29(1) of the *Class Proceedings Act*;
  - f. Pre- and post-judgment interest pursuant to the *Court Order Interest Act* RSBC 1996, c 79; and

g. Such further and other relief as to this Honourable Court may seem just.

**Part 3: LEGAL BASIS**

1. The use of a person's name or portrait in connection with paid advertising is subject to and governed by the provisions of the *Privacy Act*.
2. Facebook has committed the statutory tort set out in section 3(2) of the *Privacy Act*.
3. The claim under section 3(2) of the *Privacy Act* is actionable without proof of damages. Further or in the alternative, the plaintiff and proposed Class members have suffered loss and damage as a result of Facebook's use of their names or portraits.
4. Facebook's use of the plaintiff and Class members' names or portraits without consent was high-handed, outrageous, wanton, reckless, callous, disgraceful, wilful and entirely without care for the plaintiff's and Class members' statutory right to control the use of their own names or portraits, and as such renders Facebook liable to pay punitive damages.
5. The Supreme Court of British Columbia has exclusive jurisdiction over this dispute pursuant to section 4 of the *Privacy Act*.
6. The plaintiff pleads and relies upon the *Class Proceedings Act*, RSBC 1996, c 50.

Plaintiff's address for service:

**BRANCH MACMASTER LLP**

1410 - 777 Hornby Street  
Vancouver, BC V6Z 1S4  
Telephone: (604) 654-2999  
(File No.: X01-030)

Fax number address for service: (604) 684-3429

*100, 922 8756*  
E-mail address for service: lbrasil@branmac.com C.

Place of trial: Vancouver, British Columbia



The address of the registry is: 800 Smithe Street  
Vancouver, BC V6Z 2E1

Dated: March 29, 2012

  
Signature of  
[✓] lawyer for plaintiff  
Christopher Rhone and Luciana P. Brasil

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE  
OUTSIDE BRITISH COLUMBIA**

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the plaintiff and other Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* RSBC 2003 Ch 28 (the "*CJPTA*") in respect of these defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to ss10 (g) – (i) of the *CJPTA* because this proceeding:

- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

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**APPENDIX**

**Part 1:                CONCISE SUMMARY OF NATURE OF CLAIM:**

Breach of the Privacy Act.

**Part 2:                THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

**Part 3:                THIS CLAIM INVOLVES:**

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law

- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

**Part 4:**

1. *Class Proceedings Act*, RSBC 1996, c 50.
2. *Privacy Act*, RSBC 1996, c 373.
3. *Court Jurisdiction and Proceedings Transfer Act* RSBC 2003 Ch 28.